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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application by BellSouth Corporation,)
BellSouth Telecommunications, Inc., and)
BellSouth Long Distance, Inc. for)
Provision of In-Region, InterLATA)
Services in Louisiana)

CC Docket No. 98-121

REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC.
IN OPPOSITION TO BELL SOUTH'S APPLICATION FOR
IN-REGION, INTERLATA AUTHORITY IN LOUISIANA

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August 28, 1998

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SUMMARY

The record in this proceeding demonstrates that nothing much has changed since BellSouth filed its first application for in-region, interLATA entry in Louisiana less than a year ago. The concerns raised by the Commission then remain unsatisfied today. The Commission must, once again, reject BellSouth's application.

The record shows that BellSouth has not satisfied the threshold requirements of Track A. There are no facilities-based providers of telephone exchange service to both business and residential customers in Louisiana today, and there likely will not be in the future if the present state of affairs continues. PCS is not yet a substitute for wireline services and, hence, cannot be reasonably relied upon to satisfy the facilities-based requirement of Track A.

The record similarly demonstrates that BellSouth's compliance with the Competitive Checklist is inadequate. BellSouth's wholesale support processes remain flawed, and the access it provides to its operations support systems sorely deficient. Equally important, BellSouth has not shown that it provides reasonable and nondiscriminatory access to unbundled network elements. To be sure, BellSouth's insistence on collocation to combine UNEs contradicts any assertion that BellSouth provides nondiscriminatory access to unbundled network elements. BellSouth's failure to provide access to its broadband services and facilities similarly negates BellSouth's argument that it provides nondiscriminatory access to UNEs. BellSouth's refusal to pay reciprocal compensation for ISP traffic further demonstrates that BellSouth's compliance with the Competitive Checklist is far from complete.

Finally, BellSouth's interpretation of the "public interest" test has been rejected by the Commission, yet BellSouth appears wedded to its own narrow definition of the public interest standard. Commenters generally agree that the local exchange market in Louisiana is not yet open to competition and, hence, BellSouth's entry in Louisiana is not in the public interest at this time.

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INTERMEDIA COMMUNICATIONS INC. ("Intermedia"), through its undersigned counsel and pursuant to the Commission's Public Notices,¹ hereby respectfully submits its reply comments in this proceeding. As more fully discussed below, the record in this proceeding overwhelmingly supports a finding that BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc.'s (collectively, "BellSouth") application for in-region, interLATA authority in Louisiana fundamentally fails to satisfy the requirements of the federal Telecommunications Act of 1996 (the "1996 Act") for in-region, interLATA entry. Thus, the Commission must, once again, reject BellSouth's application.

¹ See Public Notice, DA 98-1364 (July 9, 1998); Public Notice, DA 98-1480 (July 23, 1998).

I. THE RECORD OVERWHELMINGLY SUPPORTS A COMMISSION FINDING THAT BELL SOUTH FAILS TO SATISFY THE FUNDAMENTAL REQUIREMENTS OF SECTION 271(c)(1)(A).

The record in this proceeding persuasively demonstrates that the local exchange market in Louisiana is not yet irreversibly and fully open to competition. The Department of Justice agrees.² More particularly, the record shows that *facilities-based* competition in the *residential* telephone exchange market is nonexistent in Louisiana. This, of course, is the *sine qua non* of Section 271(c)(1)(A) ("Track A")—only upon a clear showing of facilities-based or predominantly facilities based competition in *both* the business *and* residential telephone exchange markets can the petitioning Bell Operating Company ("BOC") satisfy the threshold requirements of Track A.³ In this case, there is demonstrable proof that the carriers upon whom BellSouth is relying to demonstrate Track A compliance do not, in fact, qualify as facilities-based providers of residential and business telephone exchange service.

For example, KMC has unequivocally stated in its comments that it does not provide facilities-based service to residential customers in Louisiana.⁴ Indeed, KMC provides facilities-based service to less than 30 business customers, and *no* residential customers at all.⁵ Similarly, e.spire (formerly ACSI), while not disputing its status as a facilities-based provider of competitive local exchange services to business customers, asserts that it does not offer facilities-

² Evaluation of the Department of Justice, at 9.

³ As Intermedia noted in its comments, BellSouth is not pursuing in-region, interLATA entry under Section 271(c)(1)(B) ("Track B"). Thus, a discussion of BellSouth's ineligibility under Track B is not relevant here. Nevertheless, Intermedia once again points out that BellSouth is precluded, as a matter of law, from applying under Track B.

⁴ Comments of KMC, at 3.

⁵ *Id.* at 4.

based services to residential customers in Louisiana.⁶ Hyperion similarly challenges BellSouth's assertion that it offers residential service, asserting that, while its tariffs describe residential services, the tariffs do not set forth the rates for these services and, hence, do not constitute an offer of service.⁷ AT&T, another competitive carrier cited by BellSouth in its application, also does not currently provide facilities-based residential service in Louisiana.⁸ Indeed, AT&T is not providing any local service in Louisiana through combinations of network elements or resale at all.⁹ While Shell Offshore Services Company and MetroComm—the other two competitive carriers purportedly providing facilities-based business and residential services in Louisiana—did not file comments in this proceeding, there are clear indications that they, too, do not qualify as facilities-based provider of residential and business telephone exchange service.¹⁰

Even if BellSouth could somehow prove that there were *some* facilities-based residential telephone exchange customers in Louisiana, this alone would not satisfy the requirements of Track A. Intermedia believes, as do many of the parties filing comments in this proceeding, that a *de minimis* level of facilities-based residential service is insufficient to prove the presence of meaningful local exchange competition in Louisiana.¹¹

Cognizant of the fact that its reliance on the six wireline carriers listed above is untenable, BellSouth asserts that it is eligible to proceed under Track A based on the existence of

⁶ Comments of e.spire Communications, Inc., at 6.

⁷ Comments of Hyperion, at 2.

⁸ Comments of AT&T, at 73.

⁹ Affidavit of Michelle Aguiar, at ¶ 5(attached to AT&T Comments as App. Vol. 1, Tab A).

¹⁰ See, e.g., Comments of AT&T, at 73-74; Evaluation of the Department of Justice, Appendix A, at A-17.

¹¹ See, e.g., Comments of Sprint, at 6; Comments of CompTel, at 22.

Personal Communications Service Providers ("PCS") in Louisiana. The record shows, however, that BellSouth's reliance on PCS providers is similarly untenable. Specifically, PCS is a complement to, rather than a substitute for, wireline local exchange service.¹² As Intermedia pointed out in its comments, BellSouth has not persuasively demonstrated that PCS has made the transition from a complementary telecommunications service to a competitive equivalent to wireline service.¹³ Equally unpersuasive is the M/A/R/C study upon which BellSouth heavily relies to demonstrate that PCS offers a competitive alternative to wireline service. That study contains significant methodological deficiencies which undermine its utility and reliability.¹⁴

II. THE RECORD DEMONSTRATES THAT BELL SOUTH HAS NOT YET FULLY ADDRESSED THE COMMISSION'S PREVIOUS CONCERNS WITH RESPECT TO ITS COMPLIANCE WITH THE REQUIREMENTS OF SECTION 271(c)(2)(B).

In the *South Carolina Order*¹⁵ and the *Louisiana Order*,¹⁶ this Commission expressed significant concerns pertaining to BellSouth's compliance with the requirements of Section 271(c)(2)(B) (the "Competitive Checklist"). Included among the Commission's concerns were BellSouth's failure to demonstrate that new entrants may obtain and recombine network elements, failure to provide sufficient information on the costs of collocation, failure to provide

¹² See, e.g., Affidavit of Shapiro, at 5 (attached to Sprint's Testimony); Comments of TRA, at 20; Comments of WorldCom, at 7-8.

¹³ Comments of Intermedia, at 6.

¹⁴ See, e.g., Comments of Competition Policy Institute, at 17.

¹⁵ *Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, Memorandum Opinion and Order, 13 FCC Rcd 539 (1998).

¹⁶ *Application by BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana*, Memorandum Opinion and Order, FCC 98-17 (rel. Feb. 4, 1998).

access to operations supports systems (“OSS”) at parity with that provided by BellSouth to itself, and failure to provide adequate performance measurements, among other things. The record in this proceeding demonstrates that BellSouth has not fully addressed those concerns.

A. THE RECORD SHOWS THAT BELL SOUTH’S WHOLESALE SUPPORT PROCESSES CONTINUE TO BE DEFICIENT AND DISCRIMINATORY.

The record convincingly demonstrates that significant deficiencies in BellSouth’s wholesale support processes remain. In particular, commenters agree that the access provided by BellSouth to its OSS is sorely inadequate.¹⁷ The DOJ concurs. As the DOJ observes, “[d]espite the number of improvements to its wholesale support processes since its earlier South Carolina and Louisiana section 271 applications, BellSouth has not yet demonstrated that its wholesale support processes are adequate to ensure an open market.”¹⁸

There can be no better barometer of the adequacy of the access provided by BellSouth to its OSS than the actual experiences of the competitive local exchange carriers (“CLECs”) who access BellSouth’s OSS day in and day out. The experiences of the CLECs singularly point to only one conclusion: access to BellSouth’s OSS is severely inadequate. For example, CLECs are still unable to integrate BellSouth’s preordering and ordering interfaces.¹⁹

Similarly, CLECs continue to experience major problems with BellSouth’s order processing. For instance, Intermedia continues to experience delayed Firm Order Confirmations

¹⁷ See, e.g., Comments of Intermedia, at 8; Comments of ALTS, at 13; Comments of AT&T, at 31; Comments of CompTel, at 5; Comments of KMC, at 10; Comments of WorldCom, at 18; Comments of Sprint, at 29; Comments of MCI, at 40.

¹⁸ Evaluation of the Department of Justice, at 26.

¹⁹ See, e.g., Comments of Intermedia, at 11; Comments of Sprint, at 29.

("FOCs") or lost Local Service Requests.²⁰ KMC experiences similar problems. KMC claims that BellSouth does not provide notification to KMC that an order has been received at BellSouth's Local Service Carrier Center. FOCs received by KMC from BellSouth often show incorrect order numbers or are faxed to KMC's offices in other states. Similarly, BellSouth does not provide KMC with timely notice that its orders contain errors.²¹

Other CLECs echo the problems encountered by Intermedia and KMC. WorldCom, for example, states that it has encountered a pattern of handling error rejection notices for complex orders which seems designed to prolong the process and irritate its customers.²² The record is replete with stories upon stories of CLECs' negative experiences with BellSouth's wholesale support processes, which clearly demonstrate that BellSouth's wholesale support processes are severely inadequate and, more particularly, that BellSouth does not provide nondiscriminatory access to its OSS.

The problems with BellSouth's wholesale support processes are reflected in the performance data, albeit limited, provided by BellSouth. For instance, as the DOJ observes, CLECs who use the LENS system have experienced average response times nearly twice those experienced by BellSouth's own retail representatives using RNS.²³ Similarly, the reported flowthrough rate for CLECs is 82% (aggregated residential and business), compared to BellSouth's regionwide flowthrough rates of 96% and 83% for residential and business orders,

²⁰ Comments of Intermedia, at 12.

²¹ Comments of KMC, at 12, 13, 16.

²² Comments of WorldCom, at 18.

²³ Evaluation of the Department of Justice, at 29.

respectively.²⁴ BellSouth's performance in the maintenance and repair function is equally disturbing. For example, CLEC resold orders requiring trouble dispatches took over 16 hours, nearly 40% longer than it took BellSouth.²⁵ These and other data persuasively demonstrate that BellSouth's wholesale support processes, and specifically the access BellSouth provides to its OSS, are severely inadequate.

B. THE RECORD CLEARLY INDICATES THAT BELL SOUTH'S PERFORMANCE MEASURES ARE INADEQUATE.

BellSouth proposes a set of Service Quality Measurements. Commenters overwhelmingly agree, however, that BellSouth's performance measurements and data are deficient in significant respects.²⁶ The DOJ similarly concurs that the deficiencies in BellSouth's performance measures extend across a range of OSS functional categories.²⁷ For example, as AT&T points out, BellSouth has provided no data at all for some performance measures, while for others BellSouth omits the data showing its retail performance. Other performance measurements are simply omitted.²⁸ Many commenters observe that BellSouth fails to report its

²⁴ *Id.* at 30.

²⁵ *Id.* at 34.

²⁶ *See, e.g.,* Comments of Intermedia, at 13; Comments of ALTS, at 11; Comments of AT&T, at 48; Comments of CompTel, at 11; Comments of Hyperion, at 7; Comments of Time Warner, at 4; Comments of WorldCom, at 11-12; Comments of Sprint, at 37; Comments of MCI, at 30.

²⁷ Evaluation of the Department of Justice, at 29.

²⁸ Comments of AT&T, at 48.

performance on a sufficiently disaggregated basis.²⁹ Similarly, BellSouth does not offer self-executing remedies or penalties for substandard performance.³⁰

The DOJ offers its own assessment, in which Intermedia fully concurs. Specifically, the DOJ makes the following observations:

- BellSouth provides no comparable data regarding response times experienced by its business representatives when using RNS vis-à-vis LENS.³¹
- BellSouth does not report at all on the performance of the EC-Lite system, making it difficult to assess whether the interface is performing adequately.³²
- BellSouth still omits proper measurements on Average Provisioning Interval, Orders Held for Facilities and Average Delay Days, and any measurement of Completed Service Order Accuracy.³³
- BellSouth has not yet begun reporting data for the Average Completion Notice Interval.³⁴
- BellSouth has failed to disaggregate the data on maintenance and repair performance measures below the state level.³⁵

Finally, Intermedia agrees with the DOJ's general assessment that, "given the limited commercial usage of BellSouth's wholesale support systems, the absence of complete data reflecting the performance of those systems, and indications of poor performance in data that has

²⁹ See, e.g., Comments of CompTel, at 11; Comments of Hyperion, at 7; Comments of WorldCom, at 11-12.

³⁰ See, e.g., Comments of MCI, at 30; Comments of Hyperion, at 9.

³¹ Evaluation of the Department of Justice, at 29.

³² *Id.* at 30.

³³ *Id.* at 32.

³⁴ *Id.* at 34.

³⁵ *Id.*

been reported, we do not believe that BellSouth has demonstrated through actual commercial usage that its wholesale support processes are adequate.”³⁶

C. THE RECORD DEMONSTRATES THAT BELL SOUTH DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO UNBUNDLED NETWORK ELEMENTS.

In its comments, Intermedia stated that BellSouth’s insistence on collocation to combine unbundled network elements (“UNEs”) is anticompetitive and contrary to law.³⁷ The Department of Justice (the “DOJ”) and an overwhelming number of commenters agree.³⁸ As the DOJ succinctly puts it, “BellSouth’s policy of requiring carriers that wish to combine network elements to collocate connecting equipment (such as distribution frame) imposes unnecessary costs on competing carriers, impairs the ability of competing carriers to provide reliable service, and will substantially delay entry.”³⁹

Intermedia agrees with the DOJ that using collocation to combine BellSouth’s UNEs substantially raises the costs of entry above BellSouth’s costs for the same network elements.⁴⁰ As Intermedia noted in its comments, BellSouth’s mandated collocation policy would force competitive local exchange carriers (“CLECs”) to incur unreasonably huge costs—often at least in excess of a quarter to a half a million dollars—to have access to critical UNEs. For example, to have access to all of BellSouth’s customers in Louisiana, a CLEC would have to purchase

³⁶ *Id.* at 35.

³⁷ Comments of Intermedia, at 15.

³⁸ *See, e.g.*, Comments of AT&T, at 16; Comments of MCI, at 19.

³⁹ Evaluation of the Department of Justice, at 9.

⁴⁰ *Id.* at 13.

collocation in all of BellSouth's 228 central offices. The *nonrecurring* costs of *cageless* collocation in Louisiana alone would be in excess of \$2 million. These costs are utterly and manifestly unnecessary, particularly in light of the fact that the Eighth Circuit's decision upon which BellSouth ostensibly relies to justify its unconscionable collocation policy, "neither mandates nor authorizes BellSouth's collocation requirement for combining UNEs."⁴¹

Similarly, Intermedia agrees with the DOJ that BellSouth has not demonstrated, through actual commercial use, that it would be able to provide collocation timely and reliably.⁴² For example, BellSouth's Statement of Generally Available Terms and Conditions (more commonly referred to as the "SGAT") does not include installation intervals for collocation.⁴³ Thus, a CLEC who wishes to collocate with BellSouth must face operational and deployment uncertainties. Moreover, BellSouth has already demonstrated that CLECs who choose to physically collocate could run into potential space problems. As Intermedia pointed out in its comments, BellSouth recently has filed petitions for waiver of the 1996 Act's physical collocation requirements on the grounds that it is unable to meet physical collocation requests due to space limitations in its central offices.⁴⁴

BellSouth fails to provide nondiscriminatory access to UNEs for other equally significant reasons. As the DOJ observes, "it is not only necessary that [UNEs] be available to competitors,

⁴¹ Evaluation of the Department of Justice, at 14. The DOJ supports Intermedia's argument that BellSouth's collocation policy contravenes the Eighth Circuit's holding that CLECs are entitled to provide service entirely through the use of UNEs, and are not required to deploy their own facilities in order to combine UNEs. *Id.* at 15.

⁴² Evaluation of the Department of Justice, at 16.

⁴³ Comments of Intermedia, at 19.

⁴⁴ *Id.* at 20.

but that they be available at appropriate prices.”⁴⁵ One aspect of BellSouth’s pricing which could impair the CLECs’ ability to meaningfully compete with BellSouth is collocation. The DOJ is correct that BellSouth’s Louisiana collocation pricing has not changed since its last application.⁴⁶ Specifically, BellSouth’s rates for space preparation, a significant component of physical collocation, is unascertainable. Nor does BellSouth offer any guidance to potential collocators in the way of a predefined formula for calculating space preparation costs.⁴⁷

Finally, Intermedia continues to believe that reasonable alternatives to collocation do exist. As Intermedia proposed in its comments, the Commission should require BellSouth to provide an “Extended Link” alternative to CLECs to lessen the burden of expensive collocations. Similarly, Intermedia reiterates here that BellSouth must be required to provide access to its broadband services and facilities, including access to xDSL electronics and equipment, such as DSLAM.⁴⁸

D. THE RECORD SHOWS THAT BELL SOUTH CONTINUES TO REFUSE TO HONOR ITS OBLIGATION TO PROVIDE RECIPROCAL COMPENSATION FOR INTERNET TRAFFIC.

BellSouth is obligated to compensate the CLECs for the transport and termination of BellSouth-originated traffic to the CLECs’ Internet service provider (“ISP”) customers under

⁴⁵ Evaluation of the Department of Justice, at 18.

⁴⁶ *Id* at 22.

⁴⁷ Comments of Intermedia, at 19

⁴⁸ The Commission very recently addressed the incumbent local exchange carriers’ (“ILECs”) obligations with respect to broadband services. The Commission concluded that the ILECs are subject to section 251(c) in their provision of advanced services. Specifically, the Commission found that all ILECs “must provide requesting telecommunications carriers with unbundled loops capable of transporting high-speed digital signals, and must offer unbundled access to the equipment used in the provision of advanced services” *Deployment of Wireline Services Offering Advanced*

(continued...)

both BellSouth's existing interconnection agreements and the provisions of the 1996 Act. Notwithstanding this obligation, however, BellSouth continues to refuse to provide ISP reciprocal compensation. In state after state, BellSouth has forced the CLECs to expend scarce resources to prosecute claims against BellSouth. And even where the relevant state public utility commission has found in favor of the CLECs, BellSouth has resisted compliance and has gone as far as to file appeals, motions for stay, petitions for reconsideration, and other dilatory procedural tactics, in an attempt to circumvent its contractually and statutorily mandated obligation.

Commenters agree that BellSouth's failure to pay reciprocal compensation for ISP traffic puts BellSouth in direct violation of Section 271(c)(2)(B)(xiii), among other things.⁴⁹ Because BellSouth fails to establish just, compensatory, and reasonable arrangements for compensating the CLECs for the transport and termination of BellSouth-originated ISP calls, the Commission cannot find that BellSouth has satisfied the requirements of item xiii of the Competitive Checklist. BellSouth's—and its cohorts'⁵⁰—argument that reciprocal compensation does not apply to Internet traffic because ISP traffic is not local, is hogwash. The CLECs and BellSouth have historically treated ISP traffic as local, BellSouth treats it as local for separations and reporting purposes, and BellSouth can offer no credible proof that it is not local. Indeed, over twenty state public utility commissions—including the North Carolina Utilities Commission, the Tennessee Regulatory Authority, and the Florida Public Service Commission—have so found.

(...continued)

Telecommunications Capability, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, CC Docket No. 98-147, etc., at 8 (rel. Aug. 7, 1998).

⁴⁹ See, e.g., Comments of Intermedia, at 24; Comments of ALTS, at 18; Comments of AT&T, at 68; Comments of Cox, at 3; Comments of Hyperion, at 3; Comments of KMC, at 24; Comments of Sprint, at 56; Comments of MCI, at 62.

⁵⁰ See, e.g., Comments of Ameritech, at 9.

III. THE EVIDENCE IN THE RECORD OVERWHELMINGLY SUPPORTS A FINDING THAT BELL SOUTH'S ENTRY INTO THE IN-REGION, INTERLATA MARKET IN LOUISIANA IS NOT IN THE PUBLIC INTEREST AT THIS TIME.

The record persuasively demonstrates that BellSouth's entry into the in-region, interLATA market in Louisiana is not in the public interest at this time. Commenters generally agree, as does the DOJ, that BellSouth's version of the "public interest" test is patently erroneous.⁵¹ In particular, this Commission has already rejected BellSouth's narrow public interest analysis. The Commission previously has concluded that the public interest analysis must be broad, one that includes an assessment of whether all procompetitive entry strategies are available to the CLECs. Applying the Commission's public interest standard in this case leads to the conclusion that BellSouth's entry into the in-region, interLATA market in Louisiana at this time is highly premature. In particular, the record shows that the local exchange market in Louisiana is not yet fully and irreversibly open to competition. Given this state of affairs, the Commission cannot grant BellSouth's application.

IV. CONCLUSION

BellSouth has not addressed the concerns raised by this Commission when it rejected BellSouth's applications for in-region, interLATA entry in South Carolina and Louisiana. Specifically, BellSouth has not satisfied the threshold showing required by Section 271(c)(1)(A). Even if Section 271(c)(1)(A) is somehow satisfied—and the record strongly indicates that it is

⁵¹ See, e.g., Comments of Intermedia, at 26; Comments of ALTS, at 20; Comments of e.spire, at 36; Comments of AT&T, at 88; Comments of Competition Policy Institute, at 2; Comments of CompTel, at 31; Comments of WorldCom, at 31; Comments of Sprint, at 66; Comments of TRA, at 30; Comments of MCI, at 85.

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not—BellSouth fails to satisfy the individual requirements of Section 271(c)(2)(B). Finally, because the local exchange market in Louisiana is not yet fully and irreversibly open to competition, the Commission cannot find that BellSouth's entry into the in-region, interLATA market in Louisiana is in the public interest at this time. Thus, the Commission must, for the second time, reject BellSouth's application for interLATA authority in Louisiana.

Respectfully submitted,

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Dated: August 28, 1998

CERTIFICATE OF SERVICE

I, Enrico C. Soriano, hereby certify that I have, on this 28th day of August, 1998, caused to be served a copy of the foregoing REPLY COMMENTS OF INTERMEDIA COMMUNICATIONS INC. IN OPPOSITION TO BELL SOUTH'S APPLICATION FOR IN-REGION, INTRALATA AUTHORITY IN LOUISIANA upon the following individuals, by hand-delivery unless otherwise noted:

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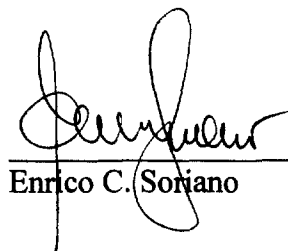
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